

**United States Environmental Protection Agency
Criminal Investigation Division
Investigative Activity Report**

Case Number

0600-0500

Case Title:

Rabun Dairy

Subject of Report:

Interview of (b) (6), (b) (7)(C)

Copies to:

Reporting Office:

Dallas, TX, Area Office

Activity Date:

March 12, 2007

Related Files:

Reporting Official and Date:

(b) (6), (b) (7)(C) SAGT
22-MAR-2007

Approving Official and Date:

(b) (6), (b) (7)(C), SAC
22-MAR-2007
Approved by: (b) (6), (b) (7)(C), SAC

SYNOPSIS

On 03/12/2007 at approximately 1430 hours, SA (b) (6), (b) (7)(C) and Special Investigator (SI) (b) (6), (b) (7)(C) of the Texas Commission on Environmental Quality (TCEQ), Special Investigation Section, conducted an interview of (b) (6), (b) (7)(C) at (b) (6), (b) (7)(C) place of employment, the Texas State Soil and Water Conservation Board (TSSWCB), Mount Pleasant Regional Office, located at 1809 West Ferguson, Suite B, Mount Pleasant, TX 75455.

DETAILS

On 03/12/2007 at approximately 1430 hours, SA (b) (6), (b) (7)(C) and Special Investigator (SI) (b) (6), (b) (7)(C) of the Texas Commission on Environmental Quality (TCEQ), Special Investigation Section, conducted an interview of (b) (6), (b) (7)(C) at (b) (6), (b) (7)(C) place of employment, the Texas State Soil and Water Conservation Board (TSSWCB), Mount Pleasant Regional Office, located at 1809 West Ferguson, Suite B, Mount Pleasant, TX 75455. Personal information for (b) (6), (b) (7)(C) is as follows:

Full Name: (b) (6), (b) (7)(C) W/M, (b) (6), (b) (7)(C) lbs, (b) (6), (b) (7)(C), (b) (6), (b) (7)(C);
DOB: (b) (6), (b) (7)(C); TXDL: (b) (6), (b) (7)(C); SSN: (b) (6), (b) (7)(C);
Address: (b) (6), (b) (7)(C), Jefferson, TX 75657, (b) (6), (b) (7)(C);

Currently employed by: TSSWCB, Mount Pleasant Regional Office, 1809 West Ferguson, Suite B, Mount Pleasant, TX 75455, (b) (6), (b) (7)(C) Office, (903) 572-4897 Fax.

Also present during the interview were (b) (6), (b) (7)(C), TSSWCB Mount Pleasant Regional Office Program Supervisor; and (b) (6), (b) (7)(C)

This document contains neither recommendations nor conclusions of the EPA.
It is the property of the EPA and is loaned to your agency;
it and its contents are not to be distributed outside your agency.

**United States Environmental Protection Agency
Criminal Investigation Division
Investigative Activity Report**

Case Number

0600-0500

(b) (6), (b) (7)(C), TSSWCB Natural Resources Specialist.

(b) (6), was advised of the purpose of the interview and consented to the interview. (b) (6), then provided the following statements:

(b) (6), said that (b) (6) has held several jobs as a professional engineer (PE) prior to coming to work for the TSSWCB. (b) (6), said that (b) (6) joined the TSSWCB in approximately May of 2004. (b) (6), said that (b) (6) present job includes (b) (6) conducting water quality management plan (WQMP) inspections of dairies within the area covered by the TSSWCB's Mount Pleasant Regional Office, and ensuring that WQMP's are correctly engineered.

(b) (6), briefly explained that a WQMP is a site-specific plan developed through and approved by the TSSWCB for agricultural operations, including dairies. (b) (6), said that the plans include appropriate land uses, appropriate practices for the land treatment of cattle or poultry wastes, production practices and management measures. (b) (6), said that the purpose of WQMPs is to prevent or abate agricultural pollution, in consultation with local soil and water conservation districts, and in compliance with Texas' water quality standards. (b) (6), added that WQMPs are designed to prevent or mitigate non-point source water pollution, and the plans do not allow or permit any point source discharges to waters of the State of Texas.

(b) (6), stated that on 01/19/2005, (b) (6) received a referral from the TCEQ in Tyler, TX, regarding contaminated runoff from the RABUN Dairy. (b) (6), stated at the RABUN Dairy, located in Hopkins County, TX, at 5747 Farm to Market Road (FM) 3389, Brashear, TX 75420, is the holder of WQMP #445-02-298, which was certified by the TSSWCB on 10/26/2001.

(b) (6), stated that on 01/21/2005, (b) (6) along with (b) (6), (b) (7)(C), drove from TSSWCB's Mount Pleasant Regional Office and met first with Carol PASELK at (b) (6) property located at 330 County Road 1169, Brashear, TX 75420. There, (b) (6), stated that PASELK showed them where liquid from the RABUN Dairy flowed onto (b) (6) property. (b) (6), stated (b) (6) observed puddles of liquid in the small creek located on PASELK's property, but no liquid was currently flowing onto PASELK's property from the RABUN Dairy.

(b) (6), stated that (b) (6) and (b) (6), (b) (7)(C), along with Hopkins County Environmental Officer (b) (6), (b) (7)(C) then left PASELK's property and drove to the RABUN Dairy. At the RABUN Dairy, (b) (6), stated that (b) (6) met with (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) [herein referred to as (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C)].

This document contains neither recommendations nor conclusions of the EPA.
It is the property of the EPA and is loaned to your agency;
it and its contents are not to be distributed outside your agency.

**United States Environmental Protection Agency
Criminal Investigation Division
Investigative Activity Report**

Case Number

0600-0500

stated that (b) (6), explained that on 01/19/2005, (b) was draining down (b) lagoon in order to make repairs to the entrance line of the lagoon. (b) (6), said (b) (6), explained that they [the (b) (6), (b)] milk their dairy cows twice a day, and after each milking, they wash down the concrete floor of the milking barn. (b) (6), told (b) (6), that at some point prior to 01/19/2005, the discharge line, or "backflush line," that flows wastewater from the concrete slab of the dairy barn into the lagoon became plugged. (b) (6), further told (b) (6), that the plug was caused by sand and a toy shovel that (b) (6), (b) (7)(C) accidentally dropped into the drain at the dairy barn.

(b) (6), told (b) (6), that (b) drug (b) 4" discharge hose, which is connected to the waste lagoon's pump, to a location some distance away from the lagoon. (b) (6), said (b) did not connect the discharge end of the 4" hose to the sprayer, or "gun," as it is referred to in industry, which (b) (6), said was required by (b) (6), (b) WQMP. (b) (6), stated that (b) (6), likely did not connect the sprayer because (b) (b) (6), (b) could pump down the waste lagoon faster if the sprayer was not connected. (b) (6), said (b) started draining the waste lagoon at approximately 1100 hours. (b) (6), said (b) (6), told (b) that (b) (b) (6), (b) did not discharge the entire contents of (b) waste lagoon, but rather, (b) only pumped enough to drop the waste lagoon level below the discharge line so that the abovementioned repair could be made.

(b) (6), stated that on 01/21/2005, (b) observed the waste lagoon's level to be approximately 3' from the top of the berm.

(b) (6), stated that (b) and (b) (6), drove out to the location in the pasture where the discharge hose was. (b) (6), said (b) (6), explained that the discharge hose was still in the same position that it was on 01/19/2005 and that (b) (b) (6), (b) had not moved it since. (b) (6), said the sprayer was located some 40' away from the end of the discharge hose. (b) (6), said (b) (6), never alleged that the hose had come loose from the sprayer, but rather, (b) (6), told (b) that (b) (b) (6), (b) did not connect the sprayer on 01/19/2005 prior to discharging.

(b) (6), said it was evident from the discharge hose's placement that the discharge on 01/19/2005 had quickly followed a cattle path which led from the top of the small hill down towards PASELK's property. (b) (6), stated that the cattle path ran in a southwestern direction from the discharge hose towards PASELK's property. (b) (6), stated that it was also evident the discharge, upon following the cattle path, encountered a berm around

This document contains neither recommendations nor conclusions of the EPA.
It is the property of the EPA and is loaned to your agency;
it and its contents are not to be distributed outside your agency.

**United States Environmental Protection Agency
Criminal Investigation Division
Investigative Activity Report**

Case Number

0600-0500

a small cooling pond located in the southwestern corner of the RABUN Dairy, and then, not being able to climb the berm, flowed onto PASELK's property. (b) (6), stated that it was evident that once on PASELK's property, the discharge quickly found the small depression, or creek, on PASELK's property which flowed to the west. (b) (6), stated that what (b) (6) observed on the RABUN Dairy was consistent with what PASELK had described.

(b) (6), told (b) (6), that at some point in the early afternoon of 01/19/2005, PASELK came to the RABUN Dairy and told (b) (6), (b) (6), (b) (6) that there was liquid flowing onto (b) (6) property. (b) (6), told (b) (6), that (b) (6), (b) (6), (b) (6) turned the pump off at approximately 1300 hours.

(b) (6), said (b) (6) informed (b) (6), that discharging the lagoon effluent through the 4" hose without using the sprayer was out of compliance with their [RABUN Dairy] WQMP.

(b) (6), said that it is (b) (6), (b) (6), (b) (7)] belief that (b) (6), (b) (6) discharge of waste lagoon effluent on 01/19/2005 was not malicious because (b) (6), did not intend to discharge the waste lagoon effluent onto PASELK's property.

(b) (6), stated that with (b) (6), (b) (6) help, (b) (6) was able to estimate the level of the waste lagoon prior to (b) (6), (b) (6) pumping on 01/19/2005 - and the level of the waste lagoon when (b) (6), terminated pumping on 01/19/2005. (b) (6), stated that using those levels, (b) (6) calculated the estimated pumped volume of waste lagoon effluent to be approximately 43,338 gallons. (b) (6), said (b) (6) then compared the estimated pumped volume to the pump rate of the RABUN Dairy. (b) (6), said the (b) (6), (b) (6) waste lagoon pump was rated at 150 gallons per minute. (b) (6), stated that according to (b) (6) calculation, it would have taken (b) (6), approximately 5 hours to pump 45,000 gallons. (b) (6), stated that (b) (6) then compared these figures to what (b) (6), told (b) (6) of the event - which was that (b) (6), started pumping at approximately 1100 hours and shut the pump off at approximately 1300 hours - to what PASELK told (b) (6) of the event - which was that (b) (6) first noticed liquid flowing onto (b) (6) property at approximately 1300 hours and observed that it was still flowing onto (b) (6) property at 1700 hours. Based on (b) (6) calculations, (b) (6), said that PASELK's version was probably "closer to the truth."

Since the 01/19/2005 complaint, (b) (6), said PASELK has complained about the RABUN Dairy on two other occasions. (b) (6), stated PASELK's next complaint came on approximately 04/05/2005, when PASELK called to report

This document contains neither recommendations nor conclusions of the EPA.
It is the property of the EPA and is loaned to your agency;
it and its contents are not to be distributed outside your agency.

**United States Environmental Protection Agency
Criminal Investigation Division
Investigative Activity Report**

Case Number

0600-0500

that mist from the RABUN Dairy's sprayer was blowing over onto (b) (6) property. (b) (6), said (b) (6) investigated PASELK's complaint on the same day (04/05/2005) by going first to PASELK's property and then to the RABUN Dairy. (b) (6), said that (b) (6) found PASELK's complaint to be without merit.

(b) (6), stated that PASELK's next complaint came on 11/28/2005. In this instance, (b) (6), stated (b) (6) was initially called by (b) (6), (b) (7)(C) the Hopkins County Environmental Officer. (b) (6), said (b) (6), (b) (7)(C) informed (b) (6) that PASELK called and reported seeing the RABUN Dairy's 4" discharge hose in the same pasture that (b) (6) believed it must have been on 01/19/2005. (b) (6), said (b) (6) investigated PASELK's complaint on the same day (11/28/2005) by going to the RABUN Dairy. (b) (6), stated that at the RABUN Dairy (b) (6) encountered (b) (6), (b) (7)(C) who informed (b) (6) that they [the (b) (6), (b) (7)(C)] had stretched the 4" discharge hose out onto the pasture in question so repairs could be made to the hose. (b) (6), (b) (7)(C) said that no discharge of waste lagoon effluent had occurred. (b) (6), (b) (7)(C) said that ultimately, repairs were not made to the discharge hose due to their fear that welding might catch the dry pasture on fire. (b) (6), said that the hose had been relocated to the dairy barn. Ultimately, (b) (6), said (b) (6) found this complaint to also be without merit.

(b) (6), stated that (b) (6) along with (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) accompanied EPA Region 6 Combined Animal Feeding Operation Enforcement Coordinator (b) (6), (b) (7)(C) to both the RABUN Dairy and PASELK's property on 12/12/2006. (b) (6), said (b) (6) did not participate in (b) (6), (b) (7)(C) interview of (b) (6), (b) (7)(C).

(b) (6), stated that besides the 01/19/2005 incident, the RABUN Dairy has been compliant and is a very well-run, small, dairy. (b) (6), stated that besides cattle waste, the discharge on 01/19/2005 likely contained large amounts of freshwater used by the (b) (6), (b) (7)(C) to wash down their milking barn and rainwater. (b) (6), stated that the discharge did not include the solids at the bottom of the of the lagoon, as the solids were still in the lagoon on 01/21/2005 when (b) (6) [(b) (6), (b) (7)(C)] observed the waste lagoon.

(b) (6), stated that since the 01/19/2005 complaint inspection of the RABUN Dairy, (b) (6) [(b) (6), (b) (7)(C)] has become "good friends" with (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) stated that (b) (6), (b) (7)(C) has called (b) (6) on a number of occasions and expressed to (b) (6) (b) (6), (b) (7)(C) frustration with this issue, and (b) (6) fear that PASELK's lawsuit and/or EPA's investigation could result in the financial loss of their [the (b) (6), (b) (7)(C)] dairy.

This document contains neither recommendations nor conclusions of the EPA.
It is the property of the EPA and is loaned to your agency;
it and its contents are not to be distributed outside your agency.